

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

In the Matter of)
)
)

WINDING HILLS PARTNERSHIP)
d/b/a WINDING HILLS APARTMENTS)
Davenport, Iowa)
)
)

Respondent)

Docket No. TSCA-07-2003-0020

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about November 21, 2002, pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), when the United States Environmental Protection Agency (Complainant) issued Winding Hills Partnership, d/b/a Winding Hills Apartments, of Davenport, Iowa (Respondent), a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondent with violations of Section 409 of TSCA, 15 U.S.C. § 2689, and the regulations of 40 C.F.R. part 745, subpart F - *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property* ("Disclosure Rule"), which were promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*

The Complaint proposed a civil penalty of Six Thousand Six Hundred Dollars (\$6,600.00) for these alleged violations. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order is the result of such negotiations, and fully and finally resolve the allegations contained in the Complaint.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint, and neither admits nor denies the factual allegations of the Complaint.

2. Respondent waives its right to contest the allegations of the Complaint and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of One Thousand Three Hundred and Twenty Dollars (\$1,320.00), to be paid within thirty (30) days of the effective date of the Final Order.

6. In settlement of this matter, Respondent agrees to complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental or public health benefits:

Respondent agrees to conduct a lead abatement project. Specifically, Respondent agrees to have the baseboard in his property located at the Winding Hills Apartments, Winding Hill Road, in Davenport, Iowa, removed and replaced with new lead free baseboard. Respondent agrees that the abatement project shall only be performed by a person or firm which has been certified by the State of Iowa to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223.

7. The total expenditure for the SEP shall be not less than Twenty Thousand Dollars (\$20,000) and the SEP shall be completed no later than June 30, 2005. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

8. Within thirty days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- (v) The report shall be directed to the following:

As to EPA:
Patricia A. Scott,
ARTD/RALI
U.S. Environmental Protection Agency, Region 7
901 N. 5th Street
Kansas City, KS 66101

As to the state:
Rita Gergely
Iowa Dept. of Public Health
321 E 12th Street
Des Moines, IA 50319-0075

9. In the event that Respondent fails to complete the SEP in accordance with this Consent Agreement and Final Order or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP as set forth above, Respondent shall be liable for stipulated penalties as follows:

- (i) If the SEP is not timely completed to the satisfaction of EPA in accordance with the terms of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of \$4,554.
- (ii) If the SEP is completed to the satisfaction of EPA but Respondent's actual expenditures

are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty of \$396.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand therefor from Complainant.

10. Respondent certifies that he is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to establish compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent agrees not to claim this abatement project as a business expense on his federal, state, or local income tax returns and agrees not to depreciate the cost of the project on such tax returns.

11. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

12. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above or any portion of a stipulated penalty as stated in Paragraph 9 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C.

§§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of One Thousand Three Hundred and Twenty Dollars (\$1,320.00) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Julie L. Murray
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.



to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT

WINDING HILLS PARTNERSHIP

d/b/a WINDING HILLS APARTMENTS

Date: 1/23/2004

By: David Barker
Title: Partner

COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2/3/04

By: Julie L. Murray
Julie L. Murray
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 7

IT IS SO ORDERED. This Order shall become effective immediately.

Date: February 4, 2004

Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Winding Hills Partnership d/b/a Winding Hills Apartments, Respondent
Docket No. TSCA-07-2003-0020

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Julie L. Murray
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

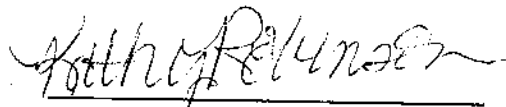
Copy by Certified Mail Return Receipt to:

Richard A. Davidson
Land and Waterman
220 North Main Street, Suite 600
Davenport, Iowa 52801-1987

Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20460

Dated: 2/4/04



Kathy Robinson
Regional Hearing Clerk

IN THE MATTER OF Winding Hills Partnership d/b/a Winding Hills Apartments, Respondent
Docket No. TSCA-07-2003-0020

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Dated: 2/5/04


Kathy Robinson
Regional Hearing Clerk